

1 fundamental importance, including the basic contractual precept that arbitration ‘is a matter of
2 consent, not coercion.’” *Id.* (citing *Volt Information Sciences, Inc. v. Board of Trustees of*
3 *Leland Stanford Junior Univ.*, 489 U.S. 468, 479 (1989)).

4 In *Stolt-Nielsen*, the Supreme Court considered an arbitration clause that was silent as to
5 whether the arbitration proceedings could be conducted on a class basis, meaning, according to
6 the parties’ stipulation, that “‘no agreement ... ha[d] been reached on that issue.’” *Id.* at 1766.
7 The Court concluded that because there was no agreement on arbitration on a class basis, the
8 courts had no authority to compel arbitration on that basis. It noted that whether enforcing an
9 agreement to arbitrate or construing an arbitration clause, courts and arbitrators must “‘give
10 effect to the contractual rights and expectations of the parties.’” *Id.* at 1773-74 (quoting *Volt*,
11 489 U.S. at 479) (other internal quotation marks omitted). In this endeavor, as with any other
12 contract, the parties’ intentions control.

13 The Supreme Court in *Stolt-Nielsen* reiterated that “[a]rbitration is simply a matter of
14 contract *between the parties*; it is a way to resolve those disputes-but only those disputes-that
15 *the parties* have agreed to submit to arbitration.” *Id.* at 1774 (quoting *First Options of Chicago,*
16 *Inc. v. Kaplan*, 514 U.S. 938, 943 (1995) (emphases in *Stolt-Nielsen*)), and reiterated that the
17 courts “‘must not lose sight of the purpose of the exercise: to give effect to the intent of the
18 parties.’” *Id.* at 1774-75 (citing *Volt*, 489 U.S. at 479). The Court stated that “‘[n]othing in the
19 [FAA] authorizes a court to compel arbitration of any issues, *or by any parties*, that are not
20 already covered in the agreement.’” *Id.* at 1774 (quoting *EEOC v. Waffle House, Inc.*, 534 U.S.
21 279, 289 (2002) (emphasis in *Stolt-Nielsen*)), and therefore party may not be compelled under
22 the FAA to submit to class arbitration unless there is a contractual basis for concluding that the
23 party *agreed to do so.*” *Id.* at 1775 (emphasis in original).¹

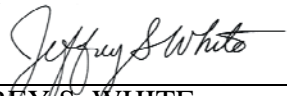
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25 ¹ *Accord Fensterstock v. Education Finance Partners*, 611 F.3d 124, 140-41 (2d Cir.
26 2010). *See also, e.g., Reed v. Florida Metropolitan University, Inc.*, 681 F.3d 630, 641 (5th
27 Cir. 2012); *Corrigan v. Domestic Linen Supply Co.*, 2012 WL 2977262, at *5 (N.D. Ill. July
28 20, 2012); *Eshagh v. Terminix International Co.*, 2012 WL 1669416, at *10 (E.D. Cal. May
11, 2012); *Lopez v. Ace Cash Express, Inc.*, 2012 WL 1655720, at *8 (C.D. Cal. May 4,
2012); *Valle v. Lowe’s HIW, Inc.*, 2011 WL 3667441, at *6 (N.D. Cal. Aug. 22, 2011);
Swift v. Zynga Game Network, Inc., 805 F. Supp. 2d 904, 909 (N.D. Cal. 2011); *Quinonez v.*
Empire Today, LLC, 2010 WL 4569873, at *5 (N.D. Cal. Nov. 4, 2010).

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Accordingly, in the absence of a contractual agreement to submit to class-wide arbitration, this Court finds that the parties to the operative title insurance policies cannot be compelled to arbitrate in a fashion they have failed to agree upon. Therefore, in order to advance the parties' efficient resolution of this matter, and considering the time pressure facing the parties, the Court issues this brief order of clarification of its previous order compelling arbitration on an individual basis and staying the action pending completion of such arbitration or settlement of the action.

IT IS SO ORDERED.

Dated: December 3, 2012



JEFFREY S. WHITE
UNITED STATES DISTRICT JUDGE

